

1 LEIGH GODDARD, NSBN 6315
2 JESSICA WOELFEL, NSBN 11885
3 MCDONALD CARANO WILSON LLP
4 100 West Liberty Street, Tenth Floor
5 Reno, NV 89501
6 Telephone: (775) 788-2000
7 Facsimile: (775) 788-2020

8 Attorneys for Plaintiff,
9 Nevada Controls, LLC

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 NEVADA CONTROLS, LLC, a Nevada
13 Limited Liability Company,

Case No.: 3:12-cv-00068-HDM-VPC

14 Plaintiff,

15 PLAINTIFF NEVADA CONTROLS'
16 MOTION TO COMPEL

17 v.

18 WIND PUMP POWER, LLC, a Kansas
19 Limited Liability Company, SUNFLOWER
20 WIND, LLC, a Kansas Limited Liability
21 Company; DAN RASURE, an individual,

22 Defendants.
23 _____/

24 Plaintiff, Nevada Controls, LLC ("Nevada Controls"), moves, pursuant to the
25 Federal Rules of Civil Procedure 26 and 37 and Local Rule 26-7, for an Order
26 compelling Defendants Wind Pump Power, LLC, Sunflower Wind, LLC, and Dan
27 Rasure to provide responses to the discovery requests served by Nevada Controls. In
28 addition, Nevada Controls seeks an award of costs and reasonable attorneys' fees
associated for the preparation of this motion.

The Motion is based upon the following memorandum of points and authorities,
the exhibits attached hereto, and such other information as the Court may wish to
consider.

///

///

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Defendants have failed to respond to discovery requests propounded by Nevada Controls. Although counsel for Nevada Controls has attempted to reach Defendants to meet and confer on this topic, the responses have not been provided. Accordingly, Nevada Controls respectfully requests that the Court order Defendants to produce all documents and information responsive to the requests for production and interrogatories. In addition, Nevada Controls request an award of its costs and reasonable attorneys' fees associated with this Motion.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case involves a dispute arising out of Defendants' breach of certain contracts related to the supply and installation of wind turbines. Nevada Controls paid Defendants more than \$300,000 for the delivery and installation of turbines. Defendants failed to perform and have refused to return the funds advanced by Nevada Controls.

On June 1, 2012, Nevada Controls served written discovery requests upon Defendants. (Interrogatories to Wind Pump Power, LLC (First Set), Ex. 1; Request for Production of Documents to Wind Pump Power, LLC (First Set), Ex. 2; Interrogatories to Sunflower Wind, LLC (First Set), Ex. 3; Request for Production of Documents to Sunflower Wind, LLC (First Set), Ex. 4; Interrogatories to Dan Rasure (First Set), Ex. 5; Request for Production of Documents to Dan Rasure (First Set), Ex. 6). Defendants' responses to the requests were due on July 5, 2012.

Defendants have failed to provide their responses to the discovery requests. (Declaration of Leigh Goddard, Ex. 7). On July 3, 2012, Dan Rasure contacted Nevada Controls' counsel and requested an extension of time to respond to the discovery requests. (Ex. 8). The extension was not granted, and yet the responses still have not been provided. (See id.).

///

On August 23, 2012, the undersigned contacted Defendants via e-mail requesting that the discovery responses be provided immediately. (Ex. 9). Receiving no response, on August 30, 2012, the undersigned again wrote to Defendants, and their out-of-state counsel, Jerry Wieslander¹, to inquire about the long overdue discovery responses. (Ex. 10). Finally, on September 17, 2012, the undersigned again sent a correspondence to Defendants regarding the overdue discovery responses and requesting a telephone call. (Ex. 11). There has been no response to any of the attempts to contact Defendants, and Defendants have failed to serve their discovery responses.

III. DISCUSSION

Rule 37 of the Federal Rules of Civil Procedure "permits a discovering party to move for an order to compel a complete response to properly submitted interrogatories or requests for production." Shuffle Master, Inc. v. Progressive Games, Inc., 170 F.R.D. 166, 170 (D. Nev. 1996). Here, Nevada Controls has been forced to bring this motion due to Defendants' refusal to respond to Nevada Controls' interrogatories and document requests. Interrogatories and requests for production of documents were served upon each of the Defendants on June 1, 2012. Defendants have failed to serve their responses to the discovery requests, and have provided no substantial justification for their complete failure to comply with the discovery rules. Indeed, repeated inquiries by Nevada Controls' counsel regarding the outstanding discovery requests have been ignored.

¹ During a hearing on Nevada Controls' Motion to Strike on August 23, 2012, Defendant Rasure informed Judge Howard McKibben that he had retained out-of-state counsel, Jerry Wieslander, to represent him and the other Defendants. As a result of that representation, on August 29, 2012, the undersigned spoke to Mr. Wieslander. During that conversation, they discussed the fact that the discovery responses were overdue. Mr. Wieslander suggested that an e-mail be sent to Defendant Rasure, with a copy to Mr. Wieslander, to once again request the discovery responses and to address the case agenda. (Ex. 7).

1 If the motion is granted, or if the requested discovery is provided after the motion
 2 is filed, the moving party is entitled to the reasonable expenses incurred in making the
 3 motion, including attorney's fees. Fed. R. Civ. P. 37(4). Sanctions under Rule 37(d)
 4 are available when the party fails to answer or object to property-served interrogatories,
 5 or fails to serve a written response to a properly served request to inspect documents
 6 or things. Jayne H. Lee, Inc. v. Flagstaff Indus. Corp., 173 F.R.D. 651, 653
 7 (D.Md.1997). A court order is not a prerequisite to sanctions under Rule 37(d). Guidry
 8 v. Continental Oil Co., 640 F.2d 523, 533 (5th Cir.1981), cert. denied, 454 U.S. 818.
 9 The Court must award expenses to the prevailing party unless it finds that the failure
 10 was "substantially justified" or that other circumstances exist that would make the
 11 award "unjust." Telluride Management Solutions, Inc. v. Telluride Investment Group,
 12 55 F.3d 463 (9th Cir.1995), abrogated on other grounds by Cunningham v. Hamilton
 13 County, Ohio, 527 U.S. 198 (1999).

14 Here, there has been no excuse provided by Defendants for their complete
 15 failure to respond to the discovery requests. Indeed, inquiries have been completely
 16 ignored. Nevada Controls should be compensated for its reasonable expenses
 17 incurred in pursuing this motion to compel. Freeman v. San Diego Ass'n of Realtors,
 18 322 F.3d 1133, 1156-57 (9th Cir. 2003). It has already incurred approximately
 19 \$2,815.00 in attorney's fees in attempting to resolve the discovery dispute and
 20 preparing the motion. Because Nevada Controls does not know whether Defendants
 21 will oppose this motion, it is difficult to estimate the amount of fees and costs incurred
 22 in prosecuting this motion. However, a reasonable estimate is that Nevada Controls
 23 will incur approximately \$1,500.00 in additional attorney's fees and costs should it be
 24 required to review the an opposition brief and prepare a reply.

25 IV. CERTIFICATION

26 Pursuant to LR 26-7(b), the undersigned counsel hereby certifies that she has
 27 made a good faith effort to confer with Defendants and their out-of-state counsel to

28 ///


1 resolve this dispute without court intervention, but such attempts have been
2 unsuccessful. (See Ex. 7).

3 **V. CONCLUSION**

4 Defendants have failed to respond to proper requests for production of
5 documents or interrogatories. Accordingly, Nevada Controls respectfully requests that
6 this Court compel Defendants to immediately respond to the outstanding discovery
7 requests, including production of the requested documents. In addition, Nevada
8 Controls respectfully requests an award costs and reasonable attorneys' fees
9 associated with the preparation of this motion, to which Plaintiff is entitled pursuant to
10 Rule 37(a)(5)(A) of the Federal Rules of Civil Procedure. A calculation of the costs and
11 reasonable fees will be provided with the Reply brief.

12 Dated: September 25, 2012.

13 McDonald Carano Wilson LLP

14 
15 LEIGH GODDARD
16 JESSICA WOELFEL

17 Attorneys for Plaintiff / Counter-Defendant
18 Nevada Controls, LLC
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that I am an employee of McDonald Carano Wilson LLP and that pursuant to LR 5-3 I caused to be electronically filed on this date a true and correct copy of the foregoing document with the Clerk of the Court using the CM/ECF system; and by depositing a copy of the same in the U.S. Mail, first class postage fully prepaid, addressed to:

Dan Rasure
Wind Pump Power, LLC
Sunflower Wind, LLC
6488 Road 16
Goodland, Kansas 67735

A courtesy copy of the foregoing has been emailed to:

Jerry Weislander
jerrywislander@gmail.com

DATED: September 25, 2012.


Pamela Miller

McDONALD-CARANO-WILSON^{LLP}
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
PO BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020